

Chapter 8

GRIEVANCES, TECHNICAL COMPLAINTS AND APPEALS

8-1 GRIEVANCES

8-1.1 Grievance Authorized

An employee may file a grievance with an appointing authority, as authorized in the civil service rules and regulations.

8-1.2 Time Limits

A grievance must be filed in writing within 14 calendar days after the employee knew of or, in the exercise of reasonable diligence, should have known of the circumstances giving rise to the grievance.

8-1.3 Types of Grievances

(a) **Types of grievances permitted.** A grievance must allege that the employee is aggrieved by one or more of the following actions of the appointing authority:

(1) Discrimination prohibited by rule 1-8 [Prohibited Discrimination].

(2) Reprisal prohibited by rule 2-10 [Whistleblower Protection].

(3) Discipline without just cause.

(4) Written counseling issued without just cause.

(5) The abolition or creation of a position for reasons other than administrative efficiency.

(6) An arbitrary and capricious lateral job change resulting in substantial harm.

(7) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) a departmental work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.

(8) Any other action for which the civil service rules or regulations specifically permit a grievance to be filed.

(b) Limitation on grievances.

- (1) Grievance not permitted.** In addition to any other limitations in the civil service rules and regulations, the following limitations on grievances apply unless the grievant alleges that the action violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(A) SES or SEMAS employee without prior status. A member of the senior executive service [SES] or the senior executive management assistant service [SEMAS] who is separated from state employment at the expiration of an appointment cannot grieve the separation if the employee did not have prior status at the time of appointment to the SES or the SEMAS.

(B) Employee in limited-term position. An employee in a limited-term position whose appointment is terminated at or before the end of the term of appointment due to lack of work or funding cannot grieve the termination.

- (2) Management rights.** Unless specifically authorized in the civil service rules or regulations, an employee cannot grieve the employer's exercise of any of the rights reserved to management in rule 6-4 [Rights of Employer].

- (3) Lateral job change.** A grievance regarding a nondisciplinary lateral job change may be grieved only under the provisions of subsection (a)(1), (a)(2), (a)(6), or (a)(7), as appropriate. In addition, a grievance regarding a disciplinary lateral

job change may be grieved under the provisions of subsection (a)(3).

- (4) Technical appointment complaints.** The following complaints cannot be filed as a grievance but must be filed directly with the department of civil service under the technical appointment complaint provisions in rule 8-3 [Technical Complaints]:

(A) Unsuccessful candidate. A complaint by an unsuccessful candidate regarding a technical appointment decision or arising out of the selection, appointment, or certification of a candidate.

(B) Employee whose appointment is revoked. A complaint by an employee whose appointment is revoked in compliance with rule 8-3 [Technical Complaints].

8-1.4 Grievance Decision by Appointing Authority

- (a) Grievance review and decision.** The appointing authority shall review the grievance and issue a written grievance decision, as provided in the regulations. If the appointing authority fails to answer the grievance within the time permitted in the regulations, the appointing authority is deemed to have denied the grievance.
- (b) Appeal of grievance decision.** The final grievance decision of the appointing authority is binding unless the grievant files a timely appeal of the decision, as authorized in rule 8-2 [Appeals of Grievance Decisions] and the civil service regulations.

[Rule 8-1 last amended effective October 1, 2001]

8-2 APPEALS OF GRIEVANCE DECISIONS

8-2.1 Appeal of Grievance Decision to Department of Civil Service Authorized

A grievant may appeal a final grievance decision of an appointing authority to the department of civil service, as authorized in the civil service rules and regulations.

8-2.2 Limitation on Grievance Appeals

A grievant is not authorized to file a grievance appeal unless the grievance alleges one or more of the following.

- (a) A tangible adverse employment action resulting from discrimination prohibited in rule 1-8 [Prohibited Discrimination].
- (b) A tangible adverse employment action resulting from reprisal prohibited by rule 2-10 [Whistleblower Protection].
- (c) One or more of the following types of discipline imposed without just cause:
 - (1) Dismissal.
 - (2) Demotion.
 - (3) Suspension.
 - (4) Reduction in pay.
 - (5) Disciplinary lateral job change.
 - (6) Interim rating or *unsatisfactory* follow-up rating, as provided in rule 2-3.4(d) [Interim and Follow-up Ratings] and rule 3-6.5 [Grievance of Probationary Rating or Discipline].

- (d) A tangible adverse employment action caused by the abolition or creation of a position.
- (e) An arbitrary and capricious lateral job change resulting in substantial harm.
- (f) Denial of compensation to which the grievant was entitled under the civil service rules and regulations.
- (g) An action that substantially harmed the employee and violated (1) article 11, section 5 of the Michigan constitution, (2) a civil service rule or regulation, (3) a departmental work rule, or (4) an enforceable written grievance settlement permitted by the civil service rules or regulations.
- (h) Any other action for which the civil service rules or regulations specifically permit a grievance appeal to be filed.

8-2.3 Further Limitations on Grievance Appeals

The following additional limitations apply to a grievance appeal unless the grievant alleges that the action of the appointing authority violated rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

- (a) **Probationary employee without status.** A probationary employee without status cannot appeal the final grievance decision of the appointing authority regarding any of the following:
 - (1) A probationary rating, an interim rating, or a follow-up rating.
 - (2) A decision to extend an employee's probationary term.
 - (3) A decision by the appointing authority to discipline the employee, including dismissal, during the probationary period or within

28 calendar days after the end of the probationary period.

- (b) **Probationary employee with status.** A probationary employee with status cannot appeal the final grievance decision of the appointing authority regarding a decision to extend the employee's probationary term.
- (c) **Reprimand or counseling.** An employee cannot appeal the final grievance decision of the appointing authority regarding a reprimand or counseling.

8-2.4 Civil Service Grievance Appeal Procedures

- (a) **Regulations.** The state personnel director shall issue regulations governing the grievance appeal and arbitration procedures.
- (b) **Referral.** If a grievance appeal is not administratively dismissed under rule 8-4 [Summary Dismissal], a hearing officer or arbitrator shall conduct an expeditious review in accordance with the civil service rules and regulations.
 - (1) **Hearing officer.** Unless the grievant elects arbitration under subsection (b)(2), the grievance appeal is referred to a hearing officer designated or appointed by the state personnel director.
 - (2) **Arbitration alternative.** As an alternative to the referral provided in subsection (b)(1), the grievant may elect to have a grievance appeal heard by an arbitrator.
 - (A) **Cost.** The grievant and the appointing authority shall share the cost of the arbitration equally.
 - (B) **Applicable rules and regulations.** An arbitrator

shall decide a grievance appeal under the same civil service rules and regulations that would be applicable if the grievance appeal were heard by a hearing officer, except as otherwise specifically provided in the regulations governing arbitration.

- (c) **Decision.** At the conclusion of the grievance appeal, the adjudicating officer shall issue a written decision setting forth findings of fact, conclusions of law, and remedial orders, if any.

- (1) **Attorney fees and costs prohibited.** An adjudicating officer cannot award attorney fees, witness fees, costs, or other expenses.
- (2) **No interest on award.** An adjudicating officer cannot award interest on any monetary award.
- (3) **Limitation on damages for limited-term appointments.** An adjudicating officer cannot award to a grievant in a limited-term appointment, the senior executive service, or the senior executive management assistant service, any damages for any period after the date of expiration of the grievant's term of appointment.

8-2.5 Further Appeal to Commission Authorized

A party that appeared and participated in a grievance appeal, including an arbitration, may file a further appeal of the final decision of the adjudicating officer to the civil service commission, as provided in the civil service rules and regulations.

8-2.6 Effective Date of Decision of Adjudicating Officer; Automatic Stay; Exception

- (a) **Effective date.** A grievance appeal decision is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) a party files a further appeal to the civil service commission within 28 calendar days after the date the decision is issued. If a party files a timely appeal to the civil service commission within 28 calendar days after the date the decision was issued, the effective date of the decision is automatically stayed pending further order of the employment relations board or civil service commission.
- (b) **Exception; grievant's reinstatement ordered.** If a final decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for cause, the appointing authority, as a condition of further appeal to the civil service commission, shall either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance. The appointing authority shall continue the reinstatement or payment of base pay and benefits while the appeal to the commission is pending, as provided in the civil service regulations.

[Rule 8-2 last amended effective October 1, 2001]

8-3 TECHNICAL COMPLAINTS

8-3.1 Complaint Regarding Technical Decision Authorized

An authorized individual, appointing authority, or organization may file a technical complaint with the department of civil service, as provided in this rule and the regulations.

- (a) **Technical classification complaint.** An employee directly affected by a technical classification decision, or the employee's appointing authority, may file a technical classification complaint.
- (b) **Technical qualification complaint.** An employee directly affected by a technical qualification decision, or the employee's appointing authority, may file a technical qualification complaint.
- (c) **Technical disbursement complaint.** An interested party authorized in rule 7-6.4 [Complaint Regarding Technical Decision] may file a technical disbursement complaint.
- (d) **Technical appointment complaint.**
- (1) **After revocation of appointment.** If, as the result of an audit, the department of civil service revokes the appointment of an employee, the employee or the employee's appointing authority may file a technical appointment complaint.
- (2) **After denial of appointment.** An unsuccessful candidate who alleges that the selection, appointment, or certification process for the position violated a civil service rule or regulation may file a technical appointment complaint.

8-3.2 Time Limits

- (a) **Technical appointment complaint.** An unsuccessful candidate who alleges that the selection, appointment, or certification process for a position violated a civil service rule or regulation must file a technical appointment complaint with the department of civil service within the following time limits:

- (1) **Notice mailed.** If the appointing authority mailed or delivered notice to the candidate that the candidate was removed from the selection process or that another person was appointed to the position, the candidate must file the technical appointment complaint no later than 14 calendar days after the later of (1) the effective date of the challenged appointment or (2) the date of the notice.
- (2) **No notice mailed.** If the appointing authority does not mail or deliver notice to the candidate, the candidate must file the technical appointment complaint within 6 months after the effective date of the challenged appointment.

- (b) **Other technical complaints.** A technical classification complaint, technical qualification complaint, or technical disbursement complaint must be filed within 14 calendar days after the date the civil service staff issued the original technical decision.

8-3.3 Civil Service Technical Review

- (a) **Referral to technical review officer.** If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in

accordance with the civil service rules and regulations.

- (b) **Technical review procedures.**

- (1) **Hearing not authorized.** A technical review officer is not authorized to conduct a hearing.
- (2) **Technical appointment complaint; certified question.** If the technical review officer determines that a technical appointment complaint raises a genuine issue as to any material fact that cannot be adequately determined under the technical complaint procedures, the technical review officer may certify one or more questions of fact to a hearing officer to conduct a hearing and issue a recommended decision to the technical review officer, as provided in the civil service regulations.
- (3) **Technical review decision.** At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any. The final technical review decision shall be based on (1) the technical expertise of the review officer, (2) the civil service rules and regulations, (3) departmental records, and (4) the documents and written submissions of the parties. In a review of a technical appointment complaint, the technical review officer shall also consider the written recommendation of the hearing officer on any certified question of fact.

8-3.4 Further Appeal to Commission Authorized

An interested party in a technical review proceeding may file an appeal of a final technical review decision, including a summary dismissal of the technical complaint, to the civil service commission, as provided in the civil service rules and regulations.

8-3.5 Effective Date of Decision of Technical Review Officer

(a) **Technical classification or qualification review.** A final technical review decision on a technical classification or qualification complaint is effective immediately upon issuance, unless a different effective date is specified in the decision.

(b) **Technical disbursement review.** A final technical review decision on a technical disbursement complaint is effective as follows:

(1) Request approved.

(A) If an initial civil service staff decision approving a request became effective under rule 7-6.3 [Effective Date of Staff Decision], a decision of a technical review officer also approving the request is effective immediately and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.

(B) If civil service staff initially denied a request, a technical review decision approving a request is effective 15 calendar days after the date the decision is issued, unless a later date is

specified in the decision. An interested party intending to appeal the technical review decision to the civil service commission may file a request that the state personnel director order the effective date of the decision stayed pending appeal. The request for a stay must be filed within 14 calendar days after the date the technical review decision is issued. The director may stay the effective date of the technical review decision pending appeal to the commission if the director determines that (1) it is unlikely that the request meets any of the standards for approval and (2) a stay is in the best interests of the classified service.

(2) **Request denied.** If civil service staff initially approved a request, a technical review decision disapproving the request is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) an interested party files a timely application for leave to appeal to the civil service commission within 28 calendar days after the date the decision was issued. If an interested party files a timely application for leave to appeal, the effective date of the technical review decision is automatically stayed and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.

(c) **Technical appointment complaint.** A technical review decision on a technical

appointment complaint is final and binding on the parties 29 calendar days after the date the decision was issued unless either (1) the decision provides for a later effective date or (2) an interested party files a further appeal to the civil service commission within 28 calendar days after the date of the decision. If a party files a timely application for leave to appeal, the effective date of the decision is automatically stayed pending further order of the employment relations board or civil service commission.

whose appointment is challenged and who is given notice of the technical appointment complaint and the opportunity to appear and defend the appointment in the technical appointment review is bound by the final technical appointment decision. The incumbent employee cannot later file a separate technical complaint or grievance regarding either (1) the incumbent employee's original selection, appointment, or certification or (2) the result of the technical appointment decision, including revocation of the incumbent employee's appointment.

[Rule 8-3 last amended effective March 18, 2001]

8-3.6 Exclusive Technical Appointment Reviews

- (a) **Exclusive proceeding.** The technical appointment review is the exclusive proceeding for any candidate or employee, including an exclusively represented employee, to bring a complaint that arises out of (1) the selection, appointment, or certification of a candidate for a position in the classified service or (2) the revocation of an appointment after a department of civil service audit. A candidate, employee, and appointing authority are prohibited from using either the civil service grievance process provided in rule 8-1 [Grievances] or a negotiated grievance process permitted by rule 6-9.6 [Negotiated Grievance Procedures]. This exclusive procedure is not applicable when a collective bargaining agreement permitted in rule 3-5 [Relation to Collective Bargaining] authorizes a different procedure regarding a reassignment, transfer, layoff, or recall.
- (b) **Incumbent employee.** If a technical appointment complaint is filed, the technical appointment review is the exclusive proceeding in which an incumbent employee whose appointment is challenged may appear and defend the employee's own selection, appointment, or certification. An incumbent employee

8-4 SUMMARY DISMISSAL OF GRIEVANCE APPEAL OR TECHNICAL COMPLAINT

A civil service adjudicating officer may summarily dismiss a grievance appeal or technical complaint for any of the following reasons:

- (a) **Not authorized.** The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.
- (b) **Lack of jurisdiction.** The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.
- (c) **Untimeliness.** The grievance, grievance appeal, or technical complaint was not filed timely.
- (d) **Another action pending.** Another civil service action has been initiated between the same parties involving substantially

the same grievance or technical complaint.

- (e) **Barred by prior claim.** Substantially the same grievance or technical complaint was adjudicated to finality in another action between the same parties.

[Rule 8-4 last amended effective March 18, 2001]

8-5 SUPERINTENDING CONTROL BY STATE PERSONNEL DIRECTOR

Without prior notice to the parties or the adjudicating officer, the state personnel director may issue an order temporarily staying further action on any matter pending before an adjudicating officer. After notice to the parties and an opportunity to be heard, the state personnel director may exercise superintending control over any adjudicating officer on any pending matter, including, but not limited to, a grievance appeal or technical complaint.

[Rule 8-5 last amended effective March 18, 2001]

8-6 ENFORCEMENT OF DECISION OF ADJUDICATING OFFICER

After a decision of an adjudicating officer becomes effective, every party shall promptly and fully comply with the decision and any remedial orders, unless otherwise ordered by the state personnel director, employment relations board, or civil service commission.

[Rule 8-6 last amended effective March 18, 2001]

8-7 APPEAL TO CIVIL SERVICE COMMISSION

8-7.1 Appeal to Civil Service Commission

When authorized in the civil service rules, a party aggrieved by the final decision of an adjudicating officer may appeal the decision to the civil service commission. An appeal to the commission must be filed with the employment relations board, as provided in the civil service rules and regulations. Unless an administrative officer recommends dismissal of the appeal as provided in rule 8-7.4 [Summary Dismissal of Claim or Application], the employment relations board shall make a recommendation to the commission as provided in rule 1-15.4 [Duties].

8-7.2 Claim and Application

- (a) **Further appeal as of right by employee.** An employee with status who was dismissed for just cause may appeal as of right from a final decision of an adjudicating officer upholding the dismissal. The state personnel director shall provide for an expedited appeal procedure in the regulations.
- (b) **Further appeal as of right by appointing authority.** An appointing authority that dismissed an employee for just cause may appeal as of right from a final decision of an adjudicating officer reinstating the employee. The state personnel director shall provide for an expedited appeal procedure in the regulations.
- (c) **Further appeal by application and leave granted.** A party aggrieved by any other final decision of an adjudicating officer may appeal to the civil service

commission upon application and leave granted.

8-7.3 Time Limits for Appeal to Commission

- (a) **Time limits for appeal to commission.** Except where another rule or a regulation establishes a shorter period, a claim of appeal or an application for leave to appeal must be received by the employment relations board within 28 calendar days after the date the final decision of the adjudicating officer is issued.
- (b) **Proof of service.** The party filing the appeal must serve a copy of the claim or application on all other parties and provide proof of the service within 3 calendar days after the claim or application is filed with the board.
- (c) **Late filing.** If a claim or application is not filed timely, the claim or application must be accompanied by an affidavit setting forth either good cause or special extenuating circumstances for the delay.
- (1) The administrative officer may accept a claim or application up to 28 calendar days late if the appellant demonstrates good cause for the delay that was not due to the appellant's own negligence.
- (2) The administrative officer may accept a claim or application filed more than 28 calendar days but less than one year late if the appellant demonstrates special extenuating circumstances for the delay.
- (3) A claim or application filed more than one year late cannot be accepted or considered under any circumstances.

8-7.4 Summary Dismissal of Claim or Application

A civil service administrative officer may recommend that the civil service commission summarily dismiss a claim or application for any of the following reasons:

- (a) **Not authorized.** The appellant is not authorized to file the appeal.
- (b) **Lack of jurisdiction.** The department of civil service or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.
- (c) **Untimeliness.** The claim or application is untimely.
- (d) **Another action pending.** Another civil service action has been initiated between the same parties involving substantially the same matter.
- (e) **Barred by prior claim.** Substantially the same matter was adjudicated to finality in another action between the same parties.

8-7.5 Grounds for Granting an Application for Leave to Appeal

- (a) **Procedure.** If an administrative officer does not recommend summary dismissal of the application for leave to appeal, the employment relations board shall consider the application as provided in rule 1-15.4(b) [Duties] and the applicable regulations.
- (b) **Grounds for granting leave to appeal.** In the discretion of the civil service commission, leave to appeal may be granted in any matter in which it is alleged that (1) the decision of the adjudicating officer is erroneous, (2) the decision violates article 11, section 5, of the

Michigan constitution or is otherwise contrary to law, including the civil service rules and regulations, or (3) the question presented is of major significance to the classified service.

8-7.6 Decision by Civil Service Commission

The civil service commission shall review and act on the recommendation of the administrative officer or the employment relations board, as provided in rule 1-15.5 [Final Action by the Commission].

8-7.7 Effective Date of Decision of Commission

A decision of the civil service commission is effective when issued unless a different effective date is specified in the decision.

8-7.8 Commission May Assume Jurisdiction

The civil service commission reserves the authority to assume jurisdiction and to take appropriate action in any proceeding at any time before the employment relations board issues its final recommendation.

8-7.9 Appeal of Final Commission Decision to Circuit Court

- (a) **Service of complaints and petitions for review.** If authorized by law, a party may file a petition for review of a final decision of the civil service commission in the Michigan circuit court. Any complaint or petition filed challenging any decision, rule, or regulation of the commission must name the commission as a party and must be served on the commis-

sion at the office of the state personnel director in Lansing, Michigan.

- (b) **Settlement of claims and lawsuits.** Where a proposed agreement resolving a claim or lawsuit contains a provision pertaining to a decision, rule, or regulation of the commission, the appointing authority or its designee shall consult with the state personnel director or the director's designee before the agreement is finalized to insure that it is consistent with all civil service decisions, rules, and regulations. The commission is not bound by any provision pertaining to a civil service decision, rule, or regulation unless the director or the director's designee has approved the provision.

[Rule 8-7 last amended effective January 1, 2002]

[End of Chapter 8]